

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the matter of)	
)	
Request for Review by)	
)	
ID Tech Solutions, Inc.)	
SPIN 143024449)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	
)	

**REQUEST FOR REVIEW
(Commitment Adjustments)**

Funding years 2009, 2010 and 2011¹
82 Separate Funding Request Numbers
53 Commitment Adjustment Letters Dated February 12 through February 25, 2013²

I. Introduction and Background

My name is Isaac Deutsch and I represent ID Tech Solutions, Inc. ID Tech Solutions, Inc. is a Service Provider under the Universal Service Support Mechanism for Schools and Libraries (the "E-rate program"). I respectfully request review of the above-referenced 53 Commitment Adjustment Letters issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC), dated February 12 through February 25, 2013 rescinding the above-mentioned funding requests on the Form 471 applications listed in Appendix A, attached.

ID Tech Solutions, Inc. has been a participant, as a service provider, in the E-rate program since 2001. In all that time, we have met all the requirements of the E-rate program and until December 2012, when USAC began rescinding previously approved commitments for Bogen Quantum Multicom PBX communications equipment, we have

¹ There are 53 different Commitment Adjustment Letters (and Forms 471) which are the subject of this Request for Review. Given the volume of letters, the originals have not been attached.

² Given the high volume of letters, I have not attached them. However, I have attached a spreadsheet as Appendix A which has the breakdown of letters by date, showing the Applicant, the Form 471 Number, the Funding Request Number and the Amount of the rescission.

never before had a situation where commitments have been rescinded. In our adherence to the program requirements we have relied on the USAC website as the definitive source of information on eligibility.

Now USAC is seeking to rescind (and recover disbursed funding for) funding decisions made in 2009, 2010 and 2011, citing no new information or documentation, stating that their previous determination of eligibility (supported by the Eligible Products Database) was incorrect. This has resulted in the issuance of the 53 Commitment Adjustment Letters on the above-referenced Funding Request Numbers (FRNs)³.

The FRNs are in two categories: one group represents charges associated with the purchase and installation of the *equipment* (Bogen PBX equipment); the other group represents charges associated with *maintenance* on said equipment.

While there are slight differences in the wording of the numerous Commitment Adjustment Letters and the description of the equipment, each of the *equipment* FRNs was rescinded because:

“After a thorough review, it was determined that the funding commitment for this request must be rescinded in full. During a review, it was determined that funding was provided for the following ineligible item: Bogen...”⁴

(In some cases the Commitment Adjustment Letters refers to the Bogen equipment as “redundant” and therefore ineligible. I will address the specific configurations and use of the equipment below.)

Similarly, taking into account the slight differences in language, for each of the *maintenance* FRNs the reason for the rescission was maintenance on ineligible (or redundant) equipment.

³ It is noted that one letter sent on February 14 rescinded the commitment in full (for FRN 1909388), however no money was disbursed on that FRN and therefore, the recovery amount is \$0.

⁴ The equipment is variously referred to as Bogen Quantum PBX components, Bogen PBX expansion units or other phrases. In all cases the manufacturer is Bogen.

I disagree completely with the determination that the Bogen equipment is ineligible. It was purchased because it was listed on the USAC website on the Eligible Products Database.

Although the website contains the following caveat:

“Applicants should generally be able to rely on entries in the database as eligible for funding, but products must be put to an eligible use pursuant to FCC rules. Many products are eligible only if used in certain ways, and an entry in the Eligible Products Database does not constitute an endorsement that a product is eligible in all circumstances.”

I maintain that the Bogen Quantum PBX expansion unit was put to an eligible use and was not used in any ineligible way and therefore USAC was wrong in deciding that the unit is not eligible.

II. Discussion

A. Equipment – Eligibility

The purpose of the Eligible Products Database is to give applicants and service providers access to information from manufacturers about products/services that are considered eligible for funding under the E-rate program. The decision whether to purchase specific equipment from Manufacturer A or Manufacturer B often comes down to whether or not the manufacturer is listed on the Eligible Products Database. This is how schools, which often do not have technical staff or other available resources to help them evaluate different brand offerings, can make “informed” decisions about the technology they need. It is also how service providers who sell a variety of products can determine the eligibility of a specific item, something that service providers in the E-rate program are held accountable for.

While it is fair to have a warning about eligible use on the Eligible Products Database, it seems beyond comprehension that, absent a finding of ineligible use, USAC can at any point come back and indicate that a product previously deemed eligible is, without further notice, ineligible and USAC can demand repayment of monies properly applied for and received.

There is nothing about the Bogen expansion unit by itself that would make it ineligible. In most situations a PBX (usually a different manufacturer than Bogen) provides the capability for connecting advanced multiline telephone instruments, IP telephones, voicemail and standard and advanced telephone line interface such as PRI or SIP Trunks. In some situations, a wall-mounted phone is preferred as the end connection. Bogen equipment is the preferred model for such units. The Bogen equipment can be used with a "primary" PBX to integrate effectively as one system, allowing station-to-station calls and calls to the public switched network to flow seamlessly between the two units. Most users do not even realize there are actually two systems involved.

The cost of utilizing the two systems will typically be similar to (or lower than) the cost of adding the additional capacity (through end connections from the same manufacturer as the PBX) to the primary PBX. In addition, since the cost of the system component cards and in particular the station cards for the Bogen equipment are typically less expensive, and are configured with higher density (more stations per card) maintenance and replacement costs for the overall system are lower.

Although the design as described above is typically how we utilize the Bogen expansion unit, it should be noted that telephone lines can be connected directly to the Bogen equipment, enabling access to the public switched network without requiring a "primary" PBX. It is the combination of the two systems however that provides the best and most cost effective solution overall.

As explained above, the Bogen expansion unit is used *in conjunction* with the primary PBX, but is itself not redundant. USAC had ample opportunity to ask for clarification as to specific usage of the Bogen expansion unit during Program Integrity Assurance (PIA) review of the subject applications. In fact, PIA did ask a number of questions which were all answered in a timely and complete fashion. At no time during PIA review were there indications that the unit (*or its use*) would be deemed ineligible.

In conclusion, the equipment itself was eligible when ordered, delivered and installed; the configuration was questioned and reviewed and was also deemed eligible at the time, and USAC has made no showing of why the equipment should now be considered "redundant" or "ineligible." As such the Commitment Adjustments should not be allowed to stand.

B. Maintenance

Finally, if the equipment is in fact eligible, then the maintenance on such equipment would also be eligible. Therefore, I am making no separate argument regarding the rescission of the maintenance FRNs; the decision on the equipment will control the disposition of those FRNs.

C. Rule Violation

The Commitment Adjustment letters all contain the following:

"On the SPAC Form, the authorized person certifies at Item 10 that the service provider has billed its customer for services deemed eligible for support. Therefore, USAC has determined that the service provider is responsible for this rule violation. Accordingly, the commitment has been rescinded in full and USAC will seek recovery of any improperly disbursed funds from the service provider."

It seems inappropriate that USAC seeks repayment from the service provider for a "rule violation" when, in fact, the service provider was following all of the requirements as presented on the USAC website to ensure eligibility. This is not a situation where USAC mistakenly approved a service or product that was not eligible. At the time that the equipment was sold, ordered, delivered and installed *it was deemed eligible*.

As the equipment was eligible, there is no action on the part of the service provider that can be construed to have *violated a rule*. In situations where USAC has come back years after a funding commitment has been made to claim that the product is, in fact, ineligible, it would appear that some proof is necessary that there was action on the part of the service provider *at the time* that could have been against the rules. To allow USAC to issue commitment adjustments without such proof seems to be the epitome of an "arbitrary and capricious" decision.

III. Prayer for Relief

A. Overturning the Commitment Adjustments

I respectfully request that the Commission review the 52 underlying decisions made by USAC, in light of all the circumstances involved, and reinstate the original funding commitment decisions made by USAC. The total amount of money that is at stake here totals more than \$1 million. It seems amazing that the Commission would condone such a high demand for money based on the current record with its lack of a foundation for the finding of ineligibility.

Additionally, since there was no rule violation at the time that the equipment and maintenance was sought (through the competitive bidding process), contracted for, ordered, delivered and installed (as, at those times, the equipment was eligible), it would defy logic that these commitment adjustments could stand.

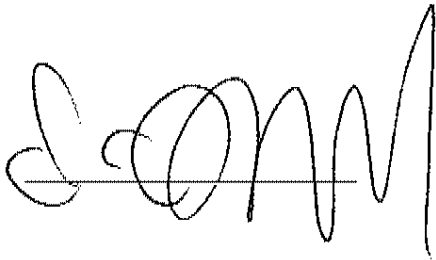
B. Alternative Waiver Request

However, if the Commission finds that there has been a rule violation, I respectfully request a waiver of the rule. *See* Federal-State Joint Board on Universal Service, Report and Order, CC Docket No. 96-45, *Universal Service Order*, 12 FCC Rcd at 9077-78 (rel. May 7, 1997). Good cause exists to waive the rule, and waiver of the rule would serve the public interest better than strict adherence to the rule.

It should be noted that there will be a hardship on the part of students at all the schools listed if ID Tech Solutions, Inc. has to repay the originally funded amounts totaling \$1,017,946.04. As you can see from Appendix A, virtually all of the schools involved are at the 90% discount level; they simply do not have the available funds to pay for the equipment (and maintenance) in its entirety. However, if ID Tech Solutions, Inc. has to repay USAC, it must seek recompense from the school anyway. It is simply not feasible for ID Tech Solutions to absorb the cost of equipment and maintenance already delivered and installed.

Again, I ask that the Commission consider the entire set of circumstances (including the potential economic hardship) in determining the appropriate relief in these cases.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "J. O. M.", written over a horizontal line.